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IN THE

Supreme Court of the United States

October Term, 1968

No. 610

UNITED STATES OF AMERICA and LIEUTENANT STANLEY D. SCHUMAN, U. S. N., a member of the armed forces of the United States on active military service not a resident of or domiciled in the State of Connecticut, suing on behalf of himself and all servicemen or former servicemen similarly situated and affected,
Appellees,

v.

JOHN L. SULLIVAN, Tax Commissioner of the State of Connecticut; GERALD A. LAMB, Treasurer of the State of Connecticut; LOUIS I. GLADSTONE, Comptroller of the State of Connecticut; and ROBERT A. KILLIAN, Attorney General of the State of Connecticut,
Appellants.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF *AMICUS CURIAE* ON BEHALF OF THE STATE OF NEW YORK

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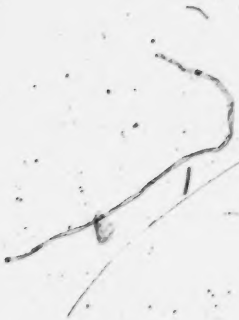

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Statement

Because of the adverse effect of the decision below upon the tax revenue of the State of New York, this brief is submitted in support of the appellants' contentions for reversal.

Questions Presented

1. Whether the imposition and collection of Sales and Use taxes on the purchase or use of tangible personal property in a State by non-resident military personnel stationed there pursuant to military orders contravenes Section 514 of the Soldiers' and Sailors' Civil Relief Act.

2. Whether Section 514 of the Soldiers' and Sailors' Civil Relief Act, as interpreted by the Court of Appeals for the Second Circuit, is an unconstitutional infringement upon the reserved power of the states to lay and collect taxes?

ARGUMENT

The Soldiers' and Sailors' Civil Relief Act § 574 does not immunize nonresident military personnel from the imposition of sales and use taxes since such immunity would be unconstitutional under the Tenth Amendment to the Federal Constitution.

We submit that the Court below completely misconstrued the tax concepts involved in both the Buck Act, *infra* and in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (54 Stat. 1178; Title 50 App. U. S. C. A. § 514 [now § 574]),* and consequently arrived at an erroneous conclusion. In the light of the reasons for their respective enactments, both Acts serve completely different ends, although they are intertwined and in *pari materia,* as were the Military Act of 1947 and the Wherry Military Housing Act of 1949 which were involved in *Offutt Housing Co.* v. *Sarpy County,* 351 U. S. 253 [1956], for example.

* These statutes are reproduced in Appellants' Brief.

The Buck Act of 1940, *infra*, stemmed from a Congressional Act of 1934 which permitted state taxation of gasoline sold by or through post exchanges except when the gasoline was for the *exclusive* use of the United States (49 Stat. 1519-1521; see *Standard Oil Co.* v. *Johnson*, 316 U. S. 481, 484 [1941].

The Buck Act was enacted in 1940 to enlarge state taxation within Federal enclaves by authorizing sales and use taxes, among others (54 Stat. 1059, 1060-1061; 4 U. S. C. A. §§ 405, *et seq.*). It must be borne in mind that the Buck Act was passed October 9, 1940 whereas the Soldiers' and Sailors' Civil Relief Act of 1940 was passed on October 17th (54 Stat. 1178, 50 U. S. C. A. App. §§ 101, *et seq.*). In 1940, however, this latter Act did not contain any provision with respect to the imposition of State taxes upon nonresident military personnel. Such provisions were not enacted until October 6, 1942 (56 Stat. 777). In contrast, however, the very enactment of the Buck Act in 1940 demonstrates Congressional awareness at that time of the existence of State and local sales taxes imposed for the support of State and local governments. Military personnel became subject to such taxation upon their purchases within Federal enclaves to serve this end. This Court, too, was fully aware of sales and use taxes, at the same time, through its decisions (see, *e. g.*, *Henneford* v. *Silas Mason Co.*, 300 U. S. 577 [1936]; *McGoldrick* v. *Berwind White Co.*, 309 U. S. 33 [1939]; *McGoldrick* v. *Felt Tarrant Mfg. Co.*, 306 U. S. 62 [1939]; *McGoldrick* v. *Compagnie Generale*, 306 U. S. 430 [1939]; *Nelson* v. *Sears, Roebuck & Co.*, 312 U. S. 359 [1940]; *Nelson* v. *Montgomery Ward*, 312 U. S. 373 [1940]; others may be cited, of course). Moreover, Congress in 1940 also was fully aware of the fact that military personnel, as Federal employees, were subject to state income taxation upon their income as the result of this

Court's decisions denying constitutional immunity in *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466 [1939]; *State Tax Comm.* v. *Van Cott*, 306 U. S. 511 [1939] (see also *Senate Report*, No. 2140; 76th Congress, 3rd Sess., Vol. 10432 *Sen. Misc. Repts. V*, "Taxation of Governmental Securities and Salaries", pp. 37, 58). It can hardly be seriously argued that Congress intended, by the Soldiers' and Sailors' Civil Relief Act, as amended in 1942, *supra*, to deny to the States their constitutional taxing powers to impose sales and use taxes upon private retail sales transactions as entered into by nonresident military personnel outside of a Federal enclave when Congress two years earlier had authorized and continued to authorize the very taxation of retail sales transactions by the very same personnel *within* a Federal enclave. This would be *reductio ad absurdum*, and squarely contrary to Congressional policy and intent which has been equally solicitous elsewhere over the costs of local government by extending State taxing jurisdiction in various Federal enclaves when the need has arisen (see, for example, the amendment to Title 4, U. S. C. A. § 104, *supra* by 61 Stat. 641 [1947] so as to include Guam within the definition of territory in order to permit Guam to tax within Federal enclaves (*U. S. Code Cong. & Admin. News*, 84th Cong. 1956, Vol. 3, pp. 3850-3853), and to permit the imposition of State and local sales and use taxes upon Atomic Energy project contractors to overcome this Court's decision in *Carson* v. *Roane-Anderson Co.*, 342 U. S. 232 [1951] by an amendment in 1953 to the Atomic Energy Act of 1946 [42 U. S. C. A. § 1809], 67 Stat. 575; (*U. S. Cong. & Admin. News*, 83rd Cong., 1953, Vol. 2, pp. 2379-2386). Of course, this Congressional consent is necessary to overcome Federal supremacy as to Federal enclaves (see *e. g. Pacific Coast Dairy* v. *Department*, 318 U. S. 285 [1942]; *Penn Dairies* v. *Milk Control*

Comm., 318 U. S. 261 [1942]; *Offutt Housing Co.* v. *Sarpy Co.*, 351 U. S. 253 [1955]; *Paul* v. *United States*, 371 U. S. 245 [1962]; *Polar Co.* v. *Andrews*, 375 U. S. 361 [1963]; *Humble Pipe Line Co.* v. *Waggonner*, 376 U. S. 369 [1964], *cf. Warren Trading Post* v. *Tax Comm.*, 380 U. S. 685 [1964]).

As stated, the enactment in 1940 of the Soldiers' and Sailors' Civil Relief Act, *supra*, contained no provisions for "residence for tax purposes". This was added in 1942 by 56 Stat. 777, § 514 (as amended, it is now § 574 of Title 50 App. U. S. C. A.) to merely fix domicile, as follows:

> "Sec. 514. For the purposes of taxation in respect of any person, or of his *property, income,* or *gross income,* by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a *residence or domicile* in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a *residence or domicile* in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the income or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942." (Emphasis added.)

This was a clear expression of Congressional concern, prophetic in nature, as to the tax implications and pitfalls which might befall servicemen under the doctrine of *mobilia sequuntur personam* and the situs of their property which had been the subject of much review by this Court prior thereto and of great importance of domicile to State taxation (see *e. g., Texas* v. *Florida,* 306 U. S. 398 [1938]; *Curry* v. *Canless,* 307 U. S. 319 [1938]; *Memphis Gas Co.* v. *Beeler,* 315 U. S. 649 [1941]; *State Tax Comm.* v. *Aldrich,* 316 U. S. 174 [1941]; *Central Hanover Bank Co.* v. *Kelly,* 319 U. S. 94 [1942]), and which has also been a perplexing problem since (see, *e. g., Northwest Airlines* v. *Minnesota,* 322 U. S. 292, 295 [1943]; *Braniff Airways* v. *Nebraska,* 347 U. S. 590 [1953]). In no way was the Relief Act to be a limitation upon the sovereign taxing powers of the States reserved by the Tenth Amendment to the Federal Constitution, since this would be unconstitutional thereunder (see *e.g., Graves* v. *New York ex rel. O'Keefe, supra,* 306 U. S. 466, *infra*) which was recognized by this Court in *Dameron* v. *Brodhead,* 345 U. S. 322, 325 [1952], *infra.*

Congress was concerned *solely* with the avoidance of double taxation through property and income taxation—not immunity from taxation—which might result from domicile *vis-a-vis* residence, as later amendments make quite clear, *infra.* Indeed, this Court has said in construing the Buck Act, *supra* (*Freeman* v. *Hewitt,* 329 U. S. 249, 258 [1946]):

> "Latin tags like *mobilia sequunter personam* often do service for legal analysis, but they ought not to confound constitutional issues. * * * 'It is a fiction, the historical origin of which is peculiar to scholars, and it is this fiction that gives whatever meaning it has to the saying * * *. But being a fiction it is not allowed to *obscure the facts, when the facts become important.*'" (Emphasis added.)

The facts are simply these. In 1942 with existing knowledge of sales and use taxes, *supra,* Congress was concerned *solely* with limiting *property* taxes and *income* taxes to the original domiciliary state of military personnel when it enacted § 514 to the Soldiers' and Sailors' Civil Relief Act, *supra,* not with interfering with the power to impose sales and use taxes upon private sales and use transactions, otherwise fully retained by the States. The rule is settled under Federal statutes that "Tax exemptions being the exception rather than the rule, much clearer language evidencing an intent to immunize * * * is necessary under these circumstances." (*Smith* v. *Davis,* 323 U. S. 111, 117 [1944].) Consequently, under principles of *ejusdem generis,* sales and use taxes are not included within nor contemplated by those taxes enumerated in § 514 now § 574, *supra,* just as a "severance" tax is not considered within the meaning of an income tax under the Buck Act (*Mississippi Fuel Corp.* v. *Cocreham,* 382 F. 2d 929, 940 [C. A. 5th Cir.] [1967] cert. den. 390 U. S. 1014; *cf: Howard* v. *Commissioner,* 344 U. S. 624, 629 [1957]). This is made quite clear by subsequent Congressional amendments. Thus, in 1944, Congress amended § 514 by adding thereto the word "personal" before property so as to make clear that "personal property taxes" fell within its scope, along with "income" taxes previously provided. The Senate, reported, in part, as follows (1944 *Senate Report,* No. 959, 78th Cong., 2d Sess., Vol. 10842, *Sen. Misc. Repts.* II, pp. 1-2):

> "The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of *double* taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently consti-

tuted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of 'temporary residence' from *taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile.* A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess *personal-property* taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to *personal-property* taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

"Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to *personal property* taxes as is now provided in respect of income taxes. (Emphasis added.)

And, at page 2, *ibid.*, the Secretary of War advised:

"As presently worded, section 514 of the act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the State of 'temporary residence' from taxing tangible personal property actually located in such State, so long as the tax does not depend on residence or domicile. A few States, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation."

And the House Military Affairs Committee reported, *ibid.*, p. 3:

"When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

"The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes."

A similar report was made by the House Military Affairs Committee (*House Report* No. 1514, 78th Cong., 2d Sess.; Vol. 10846, *House Misc. Repts.*, III, pp. 2-4). Again in 1962 Congress made a further clarifying amendment to § 574 (formerly § 514, *supra*) to make even more certain that *only* personal property taxes were contemplated—not sales and use taxes—upon favorable recommendations of the Division of Veterans' Affairs and the Department of the Army (see *U. S. Code Cong. and Admin. News*, 1962, 87th Cong. 2d Sess., Vol. 2, pp. 2841-2844). Since they reported, respectively, *ibid.*, p. 2842):

"Dear Mr. Chairman: This is in further reply to your request for a report by the Veterans' Administration on H. R. 9747, 87th Congress.

"The bill, if enacted, would amend the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, the provisions of section 514 (exempting personal property from certain State taxes) shall apply with respect to personal property, or the use thereof, within any tax jurisdiction other than

the serviceman's place of residence or domicile, regardless of where the owner may be serving in compliance with such orders.

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 App. U. S. C. 574), provides that for the purposes of taxation of personal property a person in the military service shall not be deemed to have lost a residence or domicile in any State, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in any other State, while, and solely by reason of being, so absent. Section 514 further provides that for the purposes of taxation in respect to personal property of any such person by a State, of which such person is not a resident or in which he is not domiciled, personal property shall not be deemed to be located or to be present in or to have a situs for taxation in such State. However, nothing contained in section 514 prevents taxation by any State of personal property used in or arising from a trade or business, if the State otherwise has jurisdiction.

It is our understanding that the bill is designed to prevent the taxation by a State of the personal property of a serviceman which remains with his family in a State (which could not have taxed such property under section 514 so long as he was stationed in such State) after transfer of the serviceman overseas or to a post in a different State to which he did not or could not take his family. * * *"

And, *ibid.*, pp. 2843-2844:

"* * * The existing provisions of section 514(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U. S. C. App. 574) as they relate to the taxation of personal property, presently provide that 'for the purposes of taxation in respect of any person, or his personal property, * * * by any State, territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in

any State * * *, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State * * *, while, and solely by reason of being, so absent [; and] for the purposes of taxation in respect of the personal property * * * of any such person by any State * * * of which such person is not a resident or in which he is not domiciled, * * * personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, territory, possession, or political subdivision, or district.' Section 514(1) contains a proviso to allow the taxation of personal property used in or arising from a trade or business. Under the amendment proposed in H. R. 9747 personal property which has acquired a tax exempt status under the present provisions of section 514(1) would retain this status while it was owned by a person in the military service who is not a resident of or domiciled in the political unit where the property is located. H. R. 9747 would not extend the present protection afforded service personnel under section 514(1) but would only clarify the present status of the law that the tax exempt status of the personal property of a serviceman is based upon the serviceman's absence from his State of residence or domicile in compliance with military or naval orders and not his presence in a State in compliance with military or naval orders. In at least one State, Virginia, the political subdivisions thereof are presently attempting to impose a personal property tax on the property of nondomiciliary service personnel which is left in the political subdivision after the serviceman is transferred elsewhere. At the present time a case, *United States and Captain Harold S. Bottomley, Jr. USN* v. *Arlington County,* is being litigated. This case involves an attempt by Arlington County, Va., to impose a personal property tax on the property of a Navy captain which was left in Arlington County when the captain was transferred to the command of a vessel which was deployed in the Far East. H. R. 9747 would clearly make the personal property in situations similar to the present court case nontaxable. * * *"

The Committee on Veterans' Affairs reported, *ibid.*, p. 2841:

SENATE REPORT NO. 2182

"The Committee on Veterans' Affairs, to whom was referred the bill (H. R. 9747) to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 to provide that where *personal property* taxes may not be imposed upon property of a serviceman located in a State, such taxes may not be imposed upon such property after he is transferred out of such State, having considered the same, report favorably thereon without amendment and recommended that the bill do pass.

EXPLANATION OF THE BILL

This bill amends the tax immunity provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U. S. C. App. 574(1)), so as to clarify a situation which sometimes results in taxation contrary to the intent of the act. More specifically, the bill provides that where a serviceman is absent from his residence or domicile solely by reason of compliance with military or naval orders, the tax immunity provision of existing law shall apply with respect to his *personal property*, or the use thereof, within any tax jurisdiction other than his State of residence or domicile, regardless of where such serviceman may be located in compliance with such orders.

The Soldiers' and Sailors' Civil Relief Act already makes clear that a serviceman, living with his family and owning *personal property* in a State other than his State of domicile, is not subject to taxation on *his personal property* by the nondomiciliary State.

In at least one situation, however, after a veteran was transferred overseas to a hardship post where he could not take his family, the nondomiciliary State imposed a tax on the serviceman's personal property. The basic intent of the original Civil Relief Act was to exempt servicemen from this *form of taxation*, except by a State of residence or domicile. To permit taxation of personal property by a nondomiciliary State, because of a transfer to active duty outside such State,

> would obviously be violative of the original intent of the Soldiers' and Sailors' Civil Relief Act. This legislation provides an equitable clarification of the situation: It assures that transfers of servicemen essential to their military duty shall not prejudice basic rights established by the Congress in recognition of the peculiar and special circumstances of military service." (Emphasis added.)

We submit that the Court below completely misread the foregoing legislative reports by equating sales and use taxes with those taxes specifically enumerated. This is made quite clear, too, by the Court's erroneously equating a motor vehicle "license fee" obtained from a domiciliary State with a use tax imposed by a host State. The two exactions are just not the same, as the opinion of this Court in *California* v. *Buzzard,* 382 U. S. 386 (1966) and in the *Brodhead* case, *supra,* make obvious, as does *United States* v. *Arlington Co.,* 326 F. 2d 929, C. C. A-4 (1964), all of which were misconstrued below. Judicial notice, of course, may be taken of the fact that many States imposed a personal property tax in the 1940's as distinct and separate revenue measures and Congress was well aware of this.

It is clear, therefore, the sales and use taxes involved herein concerning *private* retail transactions were never intended by the Congress to fall within the ambit of the Soldiers' and Sailors' Civil Relief Act, *supra,* as shown above. Indeed, even a specific statutory exemption therein would be prohibited by the Federal Constitution, as unconstitutional for several reasons. First, it would surely be an unconstitutional invasion of the sovereign taxing powers of the States under the Tenth Amendment, since Congress would not be "acting within the proper scope of its power" (see *Graves* v. *O'Keefe* and *Tax Comm.* v. *Van Cott, supra,* and *cf. United States* v. *City of Detroit,* 355 U. S. 463, 474 [1957]). This, of course, was fully recognized by this

Court in its opinion in *Dameron* v. *Brodhead, supra,* 345 U. S. 322 (1952), wherein it said as to domicile and the *personal property tax* there involved, but fully distinguishable from sales and use taxes (*ibid.,* p. 325):

> "What has been said in no way affects the reserved powers of the states to tax. For this statute merely states that the taxable domicile of servicemen shall not be changed by military assignments. This we think is within the federal power." (See, also, *ibid.,* p. 326.)

It is only where Federal supremacy exists that the Tenth Amendment yields, since as this Court has said "* * * the Tenth Amendment 'does not operate as a limitation upon the powers, express or implied, delegated to the national government' ". (*Case* v. *Bowles,* 327 U. S. 92, 102 [1945].) But private retail sales and use transactions entered into by *non-resident* military personnel in the "host" State wholly *outside* of Federal enclaves, having absolutely no effect upon the Federal government, are entitled to no implied constitutional immunity as they would be *within* a Federal enclave unless otherwise waived as by the Buck Act, *supra* (see above citations). Consequently, these private retail sales and use transactions are no different from those which have been denied such constitutional immunity when entered into, for example, by private parties (*United States* v. *City of Detroit,* 355 U. S. 456 [1957]). The precise same question in cases involving claimed immunity under the commerce clause is present here, *viz.:*

> "The simple and controlling question is whether the state has given anything for which it can ask in return." (*Nat. Bellas Hess* v. *Dept. of Revenue,* 386 U. S. 753, 754-755 [1966]; see also *Wisconsin* v. *J. C. Penny Co.,* 311 U. S. 435, 440 [1940]).

And all the Constitution requires is some "definite link, some minimum connection, between a state and the person,

property or *transaction* it seeks to tax''." (Emphasis added; *Miller Bros.* v. *Maryland,* 347 U. S. 340, 344-345 [1953]; *Scripto* v. *Carson,* 362 U. S. 207, 210-211 [1959]; *General Motors* v. *Washington,* 377 U. S. 436, 448 [1963]; *Nat. Bellas Hess* v. *Dept. of Revenue, supra,* 386 U. S. 753 [1966].) This nexus or minimal link is provided by the physical presence of military personnel within the taxing "host" State and the purely "local transactions" involved either as to a retail purchase or use voluntarily entered into (*Department of the Treasury* v. *Wood Corp.,* 313 U. S. 62 [1940].)

Secondly, if statutory immunity is accorded to these purely private sales and use transactions entered into by non-resident military personnel, then there is an unconstitutional discrimination and a denial of equal protection, and a denial of due process of law under the Fourteenth Amendment to those who do pay, since there exists absolutely no rational basis for classification between the two groups of private consumers (*cf., e. g., Walters* v. *City of St. Louis,* 347 U. S. 231 [1954]).

Lastly, there is no constitutional reason for immunity based upon any fear of multiple taxation by the state of residence versus the state of domicile. While the nature of a sales tax is entirely different from a use tax, both must be paid by military personnel. As this Court has observed: "Though sales and use taxes may secure the same revenues and secure complementary purposes, they are, as we have indicated, taxes on different transactions and for different opportunities afforded by a State." (*McLeod* v. *Dilworth Co.,* 322 U. S. 327, 331 [1943].) They are not mutually inclusive although "complementary" (see *e. g., Nelson* v. *Sears, Roebuck & Co.,* 312 U. S. 359, 364 [1940].) A sales tax is for the privilege of purchase whereas the

use tax is for the enjoyment of property which is imposed to avoid escaping the former.

The circumstances present here disclose that no multiple tax burden exists in a "constitutional sense" (see *e. g. General Motors Corp.* v. *Washington,* 377 U. S. 436, 449 [1963]) because a sales tax imposed in one State is solely upon the private retail transaction entered into for the privilege of purchase as well as for the privileges afforded by the State of sale. This is one taxable event. If, however, the item of purchase is subsequently removed voluntarily to the host State which thereafter exacts a use tax for the privilege of enjoying its use, this then becomes a separate and distinct taxable event in order to offset the loss of revenue which otherwise would have been derived from a sales tax if the item had been purchased in the resident host State. This, of course, is not uncommon, nor unreasonable in a constitutional sense. It is merely a practical recognition by the various States of their need for revenue from two valid sources which takes into account the mobility of the nation's populace in this day and age, irrespective of the reasons for such mobility, military or otherwise. All are treated equally and fairly in each taxable transaction. Since there are two separate and distinct taxable transactions, there can be no multiple taxation of the same taxable event by more than one State and each State exacts its own tax for a different taxable event occurring within its borders having no extra territorial effect upon the other jurisdiction. Under these circumstances, this Court "has refrained from passing on the question of 'multiple taxation' " (see *e. g., Henneford* v. *Silas Mason Co.,* 300 U. S. 577 [1936]; *Southern Pacific Co.* v. *Gallagher,* 306 U. S. 167, 172 [1939]; *General Motors Corp.* v. *Washington,* 377 U. S. 436, 449 [1963]; *cf., Matter of Atlantic Gulf & Pacific Co.* v. *Gerosa,* 16 N. Y. 2d 1, 7

[1966]; app. dism. 382 U. S. 368 for want of a substantial Federal question; *Shell Oil Co.* v. *State Board of Equalization,* 414 P. 2d 820, 828 [1966], app. dism. 386 U. S. 211) for want of a substantial Federal question. Moreover, in any event, Connecticut specifically grants a credit for the payment of a sales or use tax to another State, as follows (Education, Welfare and Public Health Tax Act (Rev. 1958, as amended):

"Sec. 12-430 (5)

(5) *Payment of sales or use tax to another state.* If any article of tangible personal property has already been subjected to a sales or use tax by any other state or political subdivision thereof and payment made thereon in respect to its sale or use in an amount less than the tax imposed by this chapter, the provisions of this chapter shall apply, but at a rate measured by the difference, only, between the rate herein fixed and the rate by which the previous tax upon the sale or use was computed. If such tax imposed in such other state or political subdivision thereof is equivalent to or in excess of the rate imposed under this chapter at the time of such sale or use, then no tax shall be due on such article."

New York grants a credit where reciprocity exists, as follows (N. Y. Tax Law, Art. 28, § 1118, 59 McKinney's Consolidated Laws of New York):

"§ 1118(7)

(7) In respect to the use of property or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property or services upon which such a sales tax or compensating use tax was paid to this state. To the extent that the tax imposed by this article is at a

higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by section eleven hundred ten of this chapter shall apply to the extent of the difference in such rates."

CONCLUSION

The Judgment below should be reversed in all respects.

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Respectfully submitted,

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